***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

WRIT PETITION No.242 of 2006

% 27-01-2006

Between:

S.Murali Krishna S/o.Venkatachelapathy

…Petitioner

And

The A.P.Scheduled Castes Cooperative Finance

Corporation Limited, rep. by its Managing Director,

Hyderabad

…Respondent

! COUNSEL FOR PETITIONER: Mr.K.G.Krishna Murthy

^ COUNSEL FOR RESPONDENT: Mr.S.Mohan Rao, Standing Counsel.

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THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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Dated 27th January 2006

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O R D E R:

The petitioner is employed as Deputy Executive Engineer, in the Andhra Pradesh Scheduled Castes Cooperative Finance Corporation Limited. A trap was laid upon him on 23.5.2005, and he was found red-handed, accepting a sum of Rs.5,000/-, as illegal gratification, from one Sri Hari Prasad Naidu. The respondent issued orders, dated 28.5.2005, placing the petitioner under suspension, with effect from 23.5.2005. The same is challenged in this writ petition.

Sri K.G.Krishna Murthy, learned counsel for the petitioner, submits that the

respondent placed the petitioner under suspension, by invoking the power under sub-rule (1) of Rule 8 of the A.P.Civil Services (CC & A) Rules 1991 (for short "the Rules"), though the said rules are not applicable to the respondent Corporation. He contends that there are no proceedings, through which the Rules have been adopted by the Corporation. Learned counsel further submits that the person, at whose instance the trap was laid, had submitted an affidavit, stating that he borrowed a sum of Rs.5,000/-, from the petitioner, and repaid the same on the date, on which the trap was laid.

Learned Standing Counsel for the respondent Corporation, on the other hand, submits that the Rules are being followed by the Corporation, in relation to the service conditions of its employees, and at any rate, the appointing authority is invested with the incidental power, to place an employee under suspension, as and when any necessity arises. He further submits that the truth or otherwise of the allegations, against the petitioner, can be known, only after the trial in the ACB case.

The first contention urged on behalf of the petitioner is that the Rules have no application to the service in the respondent Corporation. As of now, this Court is not fully informed whether the respondent had adopted such Rules, or whether they are applicable to the service in the Corporation, *per se.* Be that as it may, even assuming that the Rules are not applicable to the respondent Corporation, it needs to be noted that the power to suspend is always incidental, to the power to appoint. In the absence of specific provisions also, such a power can be exercised. This Court held so, in relation to the provisions of A.P.Excise Act and other enactments. Once the petitioner has been found
red-handed in ACB trap, suspension must follow, as a matter of course. Therefore, no exception can be taken to the action of the respondent, in placing the petitioner under suspension.

An ancillary submission to this is, as to whether the suspension could have been with retrospective effect. It is true that the order of suspension was passed on 28.5.2005, and the petitioner was placed under suspension, with effect from 23.5.2005. Such a course is impermissible in law. At the same time, the relief that can be granted to the petitioner is nothing more than treating the order of suspension, as prospective in operation. That hardly makes any difference, at this stage.

The contentions, touching on the merits of the matter, cannot be dealt with by this Court, in view of the fact that the same need to be adverted to, in the ACB case. Therefore, this Court is not inclined to interfere with the order of suspension.

The Government issued G.O.Ms.No.86, dated 8.3.1994, prescribing the guidelines to be followed, in the matter of review of the cases of the employees, against whom ACB cases are instituted. When the Rules are made applicable to the service in the respondent Corporation, the operation of the G.O. must also be taken into account. Having regard to the facts and circumstances of the case, the question as to whether the continuation of suspension of the petitioner is in the interest of the respondent, needs to be assessed and considered, duly taking into account the progress that is made in the ACB case.

For the foregoing reasons, the writ petition is disposed of, directing the respondent to review the case of the petitioner in terms of G.O.Ms.No.86, dated 8.3.1994, after expiry of one year from the date of trap. The petitioner shall be paid subsistence allowance, in accordance with the relevant rules, for the period during which he continues under suspension. There shall be no order as to costs.

27th January 2006

Note: L.R.Copies be marked.

(B/o)

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